

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

IN RE: § CHAPTER 7
DONNA SHUTE PROVENCHER, § CASE NO. 19-50339-CAG
Debtor. §

JOSEPH MAZZARA, §
Plaintiff §
vs. § ADVERSARY NO.
DONNA SHUTE PROVENCHER, §
Defendant §

**COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT PURSUANT TO
11 U.S.C. § 523(a)(6)**

TO THE HONORABLE CRAIG A. GARGOTTA, UNITED STATES BANKRUPTCY JUDGE:

Joseph Mazzara (hereinafter, "Captain Mazzara"), creditor in the above-referenced case, files this Complaint to Determine Dischargeability of Debt Pursuant to 11 U.S.C. §523(a)(6) and for such other relief as the Court deems necessary and proper (the "Complaint") with respect to Donna Shute Provencher (the "Debtor"), and respectfully sets forth and represents as follows:

1. This adversary proceeding is brought pursuant to Bankruptcy Rules 4007 and 7001 and 11 U.S.C. §523(a)(6). This adversary proceeding is brought in connection with Defendant's case under Chapter 7 of Title 11 U.S.C., Case No. 19-50339-CAG.
2. Captain Mazzara seeks judgment against the Debtor excepting his claims (scheduled and unscheduled) from discharge.

3. This Court has jurisdiction over this Complaint pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157 and venue in this Court is proper under 28 U.S.C. §§ 1408 and 1409.

4. Captain Mazzara hereby expressly states that he consents to the entry of final orders and a final judgment by the Court (an Article I bankruptcy judge) in this adversary proceeding.

5. Captain Mazzara, creditor in this case who was listed in Defendant/Debtor's bankruptcy filing, is an individual residing in Richmond, Virginia, and may be served with pleadings in this adversary proceeding by and through his attorney of record, William B. Kingman, Law Offices of William B. Kingman, P.C., 3511 Broadway, San Antonio, Texas 78209.

6. Defendant is the Debtor in the above-referenced bankruptcy case and may be served pursuant to Bankruptcy Rule 7004(b)(1) via first-class U.S. Mail, postage prepaid and properly addressed to Defendant's residence located at 426 Stone Creek Drive, Boerne, TX 78006 and also to her attorney of record (thus far only in the main bankruptcy case) Richard L. Ellison, 500 Main St., Ste. J, Kerrville, TX 78028.

7. On March 27th, 2018, Captain Mazzara filed his complaint assigned case number GV18005269-00 and styled *Joseph Mazzara, Plaintiff v. Donna Provencher, Defendant* in the Chesterfield General District Court, 12th Judicial District of Virginia (the "Lawsuit"). A true and correct copy of the pending Virginia complaint is attached hereto as Exhibit "A" and incorporated herein by reference.

8. As set forth in Exhibit "A", the principal allegation is a defamation claim by Captain Mazzara against Debtor.

9. In order to avoid a February 21st, 2019 hearing and March 7th, 2019 Virginia trial, Debtor, on February 15th, 2019, filed a Chapter 7 proceeding in the United States Bankruptcy Court

for the Western District of Texas, San Antonio Division.

10. On Schedule D of her Schedules the Debtor listed a disputed debt to Captain Mazzara in the amount of \$25,000.00 as a “Claim for Civil Damages”. On her Statement of Financial Affairs, the Debtor listed the Lawsuit and disclosed that the nature of the case was a “Defamation Claim”.

11. Plaintiff’s damages sustained are currently unliquidated but, simultaneously herewith, Plaintiff has filed his Motion for Relief from Stay to allow the Lawsuit to proceed and Defendant’s liability to be determined by the Presiding Judge in the Chesterfield General District Court, 12th Judicial District of Virginia.

12. As set forth in the attached Virginia complaint, Defendant willfully and maliciously injured Plaintiff and, therefore, Plaintiff’s claims against Defendant are non-dischargeable pursuant to §523(a)(6) of the Bankruptcy Code.

13. Furthermore, the Plaintiff requests the Court to award him a non-dischargeable judgment for attorneys’ fees and costs that are incurred in this adversary proceeding and any subsequent appeals.

WHEREFORE, Plaintiff requests that this Court:

(1) Enter a judgment against Defendant determining that the aforesaid damages which are detailed above and below and which were or are incurred by the Plaintiff are not, pursuant to §523(a)(6) of the Bankruptcy Code, dischargeable in this bankruptcy case or any other bankruptcy case filed by the Debtor;

(2) Award the Plaintiff his attorney’s fees and costs that were incurred in prosecuting this action;

(3) Award the Plaintiff all pre-judgment and post-judgment interest that accrues on the

damage award, attorneys' fees and costs to which he is entitled and at the highest legal rate until such judgment is paid in full and

(4) Grant Plaintiff such other and further relief to which he may show himself to be justly entitled.

Respectfully submitted on May 24th, 2019,

LAW OFFICES OF WILLIAM B. KINGMAN, P.C.
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By: *s/William B. Kingman*
William B. Kingman, State Bar No. 11476200
ATTORNEY FOR JOSEPH MAZZARA